

***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE***

Applicant: Sweeney, Patrick J.  
Title: VERTEBRAL PROSTHESIS  
Appl. No.: 10/686,998  
Filing Date: 10/16/2003  
Examiner: Miller, Cheryl L.  
Art Unit: 3738  
Conf. No.: 7428

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR  
PATENT APPLICATION UNDER 37 C.F.R. §1.705(b)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Applicant has calculated PTA for the captioned patent application and has determined that the patent is entitled to 168 days of Patent Term Adjustment, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702, 1.703 and 1.704:

(a) Total PTO delay: 291 days

(b) Total Applicant delay: 123 days

Final PTA Determination under 37 CFR §1.703(f): 168 days

In accordance with 1.705(b)(2)(ii), the relevant dates as specified in §§1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled are clearly represented in the attached PTA Calculation.

The relevant dates where the applicant is not in agreement with the PTO's determination are discussed in more detail below.

A Request for Continued Examination was filed in the application prior to allowance, and Patent Term Adjustment accordingly stopped accruing under 37 C.F.R. §1.703(b) on February 8,

2007. This PTA component was accordingly “ripe” at the time of allowance and accordingly could have been incorporated into the PTO’s determination of PTA.

37 C.F.R. §1.705(d) states that “Any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues.” As the above-identified issue could arguably be raised under paragraph (b), the applicant is filing this request for reconsideration under an abundance of caution, in the knowledge that the PTO does not include patent term adjustment resulting from 37 C.F.R. §1.703(b) in its PTA calculations at allowance, even if PTA has stopped accruing due to the filing of an RCE.

In accordance with §1.705(b)(2)(iv)(A), the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704 are clearly represented in the attached PTA Calculation.

Applicant therefore respectfully requests that the patent be accorded 168 days PTA.

Fee in the amount of \$200.00 set forth in 37 C.F.R. § 1.18(e) to cover the fee for this request is being paid by credit card via EFS-Web.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. § 1.705, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date May 14, 2010

By /James D. Borchardt/

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Patent Term Adjustment Calculation System

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Docket Number: 029815-0103

Application Number: 10/686998

Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	10/16/2003	0		
Edit Delete	IDS NOT falling under 1.704(c)(6), (8) or (10) filed at PTO	01/26/2004	102		
Edit Delete	Preliminary Amendment NOT falling under 1.704(c)(6) Received at PTO	08/12/2004	301		
	14 month From Application date	12/16/2004	427		
Edit Delete	Restriction Requirement	05/19/2005	581	154	
Edit Delete	Restriction Requirement Response Received at PTO	06/20/2005	613		
Edit Delete	IDS under 1.704(c)(8) filed at PTO	08/24/2005	678		65
Edit Delete	Non-Final Office Action	09/09/2005	694		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	11/14/2005	760		
	Non-Final Office Action Rsp. Rcv'd at PTO + 4 mo	03/14/2006	880		
Edit Delete	Non-Final Office Action	04/05/2006	902	22	
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	07/05/2006	993		
Edit Delete	Final Office Action	10/11/2006	1,091		
	3 Year Period Starts	10/16/2006	1,096		
Edit Delete	IDS NOT falling under 1.704(c)(6), (8) or (10) filed at PTO	11/15/2006	1,126		
Edit Delete	Final Office Action Response Received at PTO	01/05/2007	1,177		
	Final Office Action + 3 months	01/11/2007	1,183		
Edit Delete	Advisory Action	01/31/2007	1,203		
	3 Year Period Stopped	02/08/2007	1,211	115	
Edit Delete	Request For Continued Examination (no amendment)	02/09/2007	1,212		29
Edit Delete	Non-Final Office Action	03/12/2007	1,243		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	06/12/2007	1,335		
Edit Delete	Final Office Action	08/20/2007	1,404		
Edit Delete	Request For Continued Examination (including amendment)	10/30/2007	1,475		
Edit Delete	Non-Final Office Action	12/31/2007	1,537		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	03/28/2008	1,625		

Edit Delete	Non-Final Office Action	07/09/2008	1,728	
	Non-Final Office Action + 3 months	10/09/2008	1,820	
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	11/07/2008	1,849	29
Edit Delete	Non-Final Office Action	02/11/2009	1,945	
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	03/16/2009	1,978	
Edit Delete	Non-Final Office Action	06/04/2009	2,058	
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	08/18/2009	2,133	
Edit Delete	Final Office Action	12/01/2009	2,238	
Edit Delete	Final Office Action Response Received at PTO	02/01/2010	2,300	
Edit Delete	Notice of Allowance	02/19/2010	2,318	
	Projected Patent Grant Date	08/31/2010	2,511	
		Totals:	291	123
		PTA:	168	

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Version: 3.02.05

LOGIN: Carolyn Simpson

IP: 10.50.33.46

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